IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 35

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

AMERICAN TRAILER RENTALS COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 828

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

AMERICAN TRAILER RENTALS COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Respondent, American Trailer Rentals Company, herein sets forth grounds why the above-entitled cause should not be reviewed by this Court and urges that the Petition of the Securities and Exchange Commission for a Writ of Certiorari be denied.

OPINIONS OF COURTS BELOW

The opinion of the Court of Appeals is reported in 325 F.2d 47. The oral ruling of the District Court is not reported.

JURISDICTION

The jurisdiction of this Court is invoked, under 28 U.S.C. 1254 (1).

QUESTION

The petitioner has set forth as the question presented: (Petition, p. 2)

> "Whether a corporate rehabilitation under the Bankruptcy Act affecting the rights of widespread public investor-creditors, including a scaling down of their claims for the benefit of stockholders, may be conducted under Chapter XI of the Bankruptcy Act or whether transfer to Chapter X is required."

REASONS FOR DENYING THE PETITION

1. This Court has previously settled the question posed by petitioner.

2. The opinion of the court of appeals does not conflict in principle with any other decision of any other court of appeals.

3. The opinion of the court of appeals does not conflict with the teachings of this Court.

It is well to point out that the question, as set forth by the petitioner, assumes facts which are not true. There was, in fact, a substantial sacrifice of equity position by the stockholders. Further, certain stockholders are substantial general creditors and these have accepted one share of stock for every $5.50 of debt as against one share of stock for every $2 of trailer owners. The total shares of stock to be issued to such stockholders will be insubstantial in number, carry restrictions of dividends and liquidation rights for five years and are permitted only one vote for every seven shares of stock.

THIS COURT HAS PREVIOUSLY SETTLED THE QUESTION POSED BY PETITIONER

A reading of two of the leading cases on the subject readily reveals that, contrary to the position of petitioner, this question has been settled by this Court. In *Securities and Exchange Commission v. United States Realty and Improvement Company*, 310 U.S. 434, and *General Stores Corp. v. Shlensky*, 350 U.S. 462, this Court determined that the presence of any particular capital structure or particular creditor may be factors to be considered in determining the ability of Chapter XI (as opposed to Chapter X) to "meet the needs to be served", but they are only factors and not a controlling standard. In the exercise of its discretion, the lower court must determine the ability of either Chapter to meet the standard, which standard is fulfilling "the needs to be served". This has clearly been established by this Court.

General Stores Corporation v. Shlensky, supra:

> "The character of the debtor is not the controlling consideration in a choice between Ch X and Ch XI. Nor is the nature of the capital structure. It may well be that in most cases where the debtor's securities are publicly held Ch X will afford the more appropriate remedy. But that is not necessarily so. A large company with publicly held securities may have as much need for a simple composition of unsecured debts as a smaller company. And there is no reason we can see why Ch XI may not serve that end. The essential difference is not between the small company and the large company but between the needs to be served."

As to the specific question propounded by the petitioner, this Court has answered that question first in the

U. S. Realty case, supra. United States Realty was a New Jersey corporation with 900,000 shares outstanding, 7,000 shareholders, listed on the New York Stock Exchange, liabilities of $5,051,416, current liabilities of $74,916, two series of public debentures, the first of $2,339,000 and the second of $3,000,000, and was the guarantor on $3,710,500 of public held mortgage certificates. This Court, in decision on that case held:

> ". . . we find in neither chapter any definition or classification which would enable us to say that a corporation is small or large, its security holders few or many or that its securities are 'held by the public' so as to place the corporation exclusively within the jurisdiction of the court under one chapter rather than the other. But granting the jurisdiction of the court . . . ."

This Court then went forward with an explanation why Chapter XI did not meet the needs to be served. In the same case (p. 455) this Court stated:

> "A bankruptcy court is a court of equity, . . . A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief . . . ."

The teaching of the *U. S. Realty* case was enlarged in the *General Stores* case, supra.

General Stores Corp. v. Shlensky, supra:

> "Much of the argument has been devoted to the meaning of *Securities & Exch. Com. v. United States Realty & Improv. Co.*, 310 U.S. 434, 84 L ed 1293, 60 S Ct 1044. In that case we held that relief was not properly sought under Ch XI but that Ch X offered the ap-

propriate relief. That was a case of a debtor with publicly owned debentures, publicly owned mortgage certificates, and publicly owned stock. An arrangement was proposed that would leave the debentures and stock unaffected and extend the certificates and reduce the interest. It was argued in that case, as it has been in the instant one, that Ch X affords the relief for corporations whose securities are publicly owned, while Ch XI is available to debtors whose stock is closely held; that Ch X is designed for the large corporation, Ch XI for the smaller ones; that it is the character of the debtor that determines whether Ch X or Ch XI affords the appropriate remedy. We did not adopt that distinction in the United States Realty case. Rather we emphasized the need to determine on the facts of the case whether the formulation of a plan under the control of the debtor, as provided for by Ch XI and the other protective provisions of that chapter, would better serve 'the public and private interests concerned including those of the debtor.' 310 U.S. at 455."

Later, in the same case this Court found:

"We could reverse them [the lower courts] only if their exercise of discretion transcended the allowable bounds."

Clearly, this Court has answered the question set forth by petitioner. The answer is that the lower court, in the exercise of its discretion, must determine whether a Chapter XI "meets the needs to be served".

THE OPINION OF THE COURT OF APPEALS DOES NOT CONFLICT IN PRINCIPLE WITH ANY OTHER DECISION BY ANY OTHER COURT OF APPEALS

The petitioner states that the instant case is in conflict with a case decided in 1957 in the Second Circuit. *Securities and Exchange Commission v. Liberty Baking Corporation*, 240 F.2d 511. An examination of that case indicates that the factual situation is considerably different. Significant differences as found in the facts in the *Liberty Baking* case: the debenture holders were entitled to take over management for default on the debentures and the arrangement delayed that potential take-over for eight years, (in the instant case, the management is guaranteed to the trailer owners); the debenture holders were restricted in dividend and liquidation rights (in the instant case, the stockholder-creditors are the persons whose dividend, liquidation and even voting rights are restricted).

The *Liberty Baking* case contains some seemingly strong language but an overall reading of the case reaches the inescapable conclusion that the court of appeals, exercising the discretion referred to in *General Stores*, supra, determined that the needs to be served were not met in that particular case. Of interest is the fact that, since that determination, a further decision by the same circuit has been made by the court of appeals, in which the court determined, on appeal by the Securities and Exchange Commission, that a Chapter XI proceeding is to be measured by its ability to meet the needs to be served:

Grayson Robinson Stores, Inc. v. Securities and Exchange Commission, 320 F.2d 940.

"In such circumstances a court can hardly ignore a substantially uncontradicted factual showing that

> Chapter XI affords some hope of paying off creditors whereas Chapter X offers none."

In each of the foregoing cases, the second circuit court of appeals made a determination of which chapter met the needs to be served. This is the standard established by this Court, the standard applied by the second circuit and the standard applied in the instant case.

> Appendix B Petition, Oral Ruling of District Court, p. 14a:
>
> "As I stated at the outset of this hearing, I have studied the file in this case prior to the hearing. I listened to the arguments of counsel, and I am not convinced that the needs to be served here can best be met by a Chapter X."

THE OPINION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH THE TEACHING OF THIS COURT

Here the position of petitioner is overcome by the law under the first point in this brief. However, certain matters may be beneficially pointed up here:

Petitioner assumes the arrangement to be for the benefit of stockholders as against trailer owners. As previously shown, this is not true; quite the contrary. However, assuming arguendo, that this were true, that is, that stockholders were retaining their position and creditors reducing theirs, petitioner overlooks the provisions of Chapter XI itself. The plan does not have to be fair and equitable (i.e. give absolute priority to creditors over stockholders): U.S.C.A., Bankruptcy, 11 U.S.C. §766 (Amendment 1952):

"The Court shall confirm an arrangement if satisfied that —

(1) The provisions of this chapter have been complied with:

(2) It is for the best interests of the creditors and is feasible: . . . ."

and confirmation of the plan may not be refused solely because the interests of the stockholders will be preserved: U.S.C.A., Bankruptcy, supra:

"Confirmation of an arrangement shall not be refused solely because the interest of a debtor, or if the debtor is a corporation, the interest of its stockholders or members will be preserved under the arrangement."

(These two amendments were adopted July 7, 1952)

That Congress knew exactly the import and intent of these two amendments is shown in the legislative history of the 1952 amendments relating to Section 366:

"The proposed amendment is designed to remove the fair and equitable provision, and by the paragraph added to each of the amended sections it is made clear that the rule of the *Boyd* and *Los Angeles* cases shall not be operative under those three chapters (Chapters XI, XII, XIII)." U.S. Code, Cong. and Adm. News, 82d Cong. 2nd Sess. 1952, p. 1982.

This Court has said:

Securities and Exchange Commission v. United States Realty and Improvement Co., supra, 310 U.S. at 455:

"Obviously the adequacy of the relief under chapter XI must be appraised in comparison with that to be

> had under chapter X, and in the light of its effect on all the public and private interests concerned, including those of the debtor."

and again,

> *General Stores Corp. v. Schlensky*, supra, 350 U.S. at 465:
>
> "The essential difference is not between the small company and the large company but between the needs to be served."

The lower courts examined the arrangement and heard the evidence including: two days of testimony which included efforts of the Commission to establish mismanagement,[2] the estimate of management owning 3% to 5% of the outstanding stock (for which stockholder creditors will vote only one out of seven shares), the need for speed and economy essential in this case due to the mobility of the trailers and loss from theft, foreclosure of storage liens, or negligence by station operators, the necessity for large public liability insurance, and the voluntary release by the Company of trailers to the owners (which releases now number approximately 4,000 out of a total number of 5,866), evidencing a lack of pressure to accept the arrangement, among other things. After argument by the Securities and Exchange Commission before the Special Master, the presiding District Judge and the three senior judges (Chief Judge and two Circuit Judges) all were in agreement that Chapter X did not meet the needs to be

[2]The petition of the Securities and Exchange Commission refers to a petition which it filed to intervene to show violation of the anti-fraud provisions of the Securities Act of 1933; the petition should, among other things, have pointed out that there was a hearing upon the merits of the petition, and the allegations therein contained, and following that hearing, the petition was dismissed as not proven

served. This determination was within the framework of the provisions of Chapter XI, in harmony with the pronouncements of this Court, and does not conflict with any other circuit.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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